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Attorneys for Defendant
Imagina Consulting, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JASON BERGER,

Plaintiff,

7:18-CV-8956 (CS)

- against -

ANSWER

IMAGINA CONSULTING, INC.,

JURY TRIAL DEMANDED

Defendant.
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Defendant Imagina Consulting, Inc., by its attorneys, for its answer to the complaint herein, alleges as follows:

FIRST DEFENSE

1. Denies the allegations contained in Paragraph 1, except admits the allegations contained in the first and third sentences of Paragraph 1 insofar as they allege the purported statutory basis for the Plaintiff's claims.
2. Admits the allegations contained in Paragraph 2.
3. Admits the allegations contained in Paragraph 3.
4. Admits the allegations contained in Paragraph 4.
5. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5, except admits that Plaintiff is a headshot photographer.
6. Admits the allegations contained in Paragraph 6.

7. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7.

8. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8.

9. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9.

10. Denies the allegations contained in paragraph 10, except admits that Exhibit C contains a partial screenshot of a web page that was maintained by Plaintiff and that the content on that web page included the language “Shifting the World with Kindness – November 2nd – 11am EST”.

11. Denies the allegations contained in Paragraph 11, except admits that it did not contract directly with Plaintiff for a written license specific to this particular use.

12. Repeats and realleges Paragraphs 1 through 11 above as if fully set forth herein.

13. Denies the allegations contained in Paragraph 13.

14. Denies the allegations contained in Paragraph 14.

15. Denies the allegations contained in Paragraph 15.

16. Denies the allegations contained in Paragraph 16.

17. Repeats and realleges Paragraphs 1 through 16 above as if fully set forth herein.

18. Denies the allegations contained in Paragraph 18.

19. Denies the allegations contained in Paragraph 19.

20. Denies the allegations contained in Paragraph 20.

21. Denies the allegations contained in Paragraph 21.

22. Denies the allegations contained in Paragraph 22.

23. Denies the allegations contained in Paragraph 23.

SECOND DEFENSE

24. The complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

25. Plaintiff's purported claims for relief are barred in whole or in part by the doctrine of unclean hands.

FOURTH DEFENSE

26. Plaintiff has not been damaged in any sum alleged, or at all, and Plaintiff is not entitled to general, compensatory or other damages, as alleged, sought or referenced, or any other relief at all.

FIFTH DEFENSE

27. To the extent that Plaintiff has suffered any damages arising from claims asserted in the complaint, such damages are not proximately caused by Defendant or its conduct and are not otherwise Defendant's liability.

SIXTH DEFENSE

28. Plaintiff's alleged damages are too uncertain and speculative, thus precluding their calculation and recovery.

SEVENTH DEFENSE

29. Plaintiff's recovery of damages is barred in whole or in part because such recovery would constitute unjust enrichment.

EIGHTH DEFENSE

30. To the extent that Plaintiff has suffered any damages arising from claims asserted in the complaint, such damages are the result in whole or in part of Plaintiff's failure to mitigate his damages.

NINTH DEFENSE

31. Defendant's use of the Photograph was duly licensed or sublicensed by Plaintiff or a third person or entity duly authorized to grant such license or sublicense.

TENTH DEFENSE

32. If Defendant has infringed Plaintiff's copyright rights and/or committed copyright management information violations, which Defendant denies, it did so without knowledge and without reason to have knowledge that its acts constituted such infringement or violations.

ELEVENTH DEFENSE

33. The Plaintiff's claims are barred in whole or in part by the doctrine of acquiescence.

TWELFTH DEFENSE

34. The Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

PRAYER FOR RELIEF

WHEREFORE, Defendant respectfully requests that judgment be entered as follows:

- a. that Plaintiff take nothing by virtue of his Complaint;
- b. that the Complaint be dismissed with prejudice with respect to each and every claim asserted;
- c. that Defendant be awarded all reasonable attorneys' fees and costs in defending against Plaintiff's Complaint, in an amount to be determined by the Court; and
- d. for such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Defendant demands a jury trial of all issues triable by a jury.

Dated: November 26, 2018
New York, New York

ALBERT PLLC

s/ Craig J. Albert
By: _____
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